CONSERVATION LAW FOUNDATION

July 6, 2006

Robert Sydney
General Counsel
Massachusetts Division of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

Re: Comments in Response to June 2, 2006 Proposed Revisions to RPS/Biomass Regulations and Guideline on RPS Eligibility of Biomass Generation Units

Dear Mr. Sydney:

The Conservation Law Foundation (CLF) appreciates this opportunity to submit comments on the Division of Energy Resources' (Division's) June 2, 2006 Proposed Revisions to the Regulations for the Massachusetts Renewable Energy Portfolio Standard (225 CMR 14.00) and Draft Guideline on the RPS Eligibility of Biomass Generation Units ("Biomass/RPS Guideline").

We support the Division's ongoing efforts to move away from the current system of case-by-case determinations with respect to qualification of biomass facilities under the RPS, and we particularly appreciate the Division's effort to more clearly distinguish between (i) "New Renewable Generation Units" that can qualify their entire power output under the RPS and (ii) "RPS Qualified Generation Units" that can qualify only under a Vintage Waiver. However, we do have some concerns regarding the proposed RPS regulatory revisions and Biomass/RPS Guideline that we wish to highlight. Our comments are offered in the context of viewing the Massachusetts RPS as the most important tool we have for promoting much-needed development of new clean renewable energy generation. We expect to provide more detailed written comments later, after we have had an opportunity to more thoroughly review the proposed rule changes, new guidelines, and related Department of Environmental Protection (DEP) draft Best Available Control Technology (BACT) guidance for Biomass Projects.

Eligible Biomass Fuels:

We are very concerned about the proposal to broadly embrace construction and demolition (C&D) waste as an eligible biomass fuel, and even more concerned that such a proposal is not accompanied by stringent air emissions limits for known C&D waste stream contaminants such as heavy metals and other toxins. C&D waste should only be considered eligible as a biomass fuel if re-use is infeasible and if it can be demonstrated that it does not pose a threat to human

62 Summer Street, Boston, Massachusetts 02110-1016 • Phone 617-350-0990 • Fax 617-350-4030 • www.clf.org

MAINE: 14 Maine Street, Suite 200, Brunswick, Maine 04011-2026 • Phone 207-729-7733 • Fax 207-729-7373
NEW HAMPSHIRE: 27 North Main Street, Concord, New Hampshire 03301-4930 • Phone 603-225-3060 • Fax 603-225-3059
RHODE ISLAND: 55 Dorrance Street, Providence, Rhode Island 02903-2221 • Phone 401-351-1102 • Fax 401-351-1130
VERMONT: 15 East State Street, Suite 4, Montpelier, Vermont 05602-3010 • Phone 802-223-5992 • Fax 802-223-0060

health or the environment. Reuse and recycling of C&D waste should be aggressively pursued as a first recourse; use as fuel for biomass facilities should not be the path of least resistance for disposal of contaminated C&D waste.

Importantly, we question the ability to effectively sort C&D waste in a way that ensures only clean wood debris is used as a biomass fuel. Without an effective sorting program, the risk of heavy metals and other toxic pollutants becoming airborne is unacceptably high. Based on similar concerns, New Hampshire recently renewed its moratorium on disposal of C&D debris by incineration until 2008. *See* New Hampshire HB 1433, 2006 Session, approved on May 26, 2006. We therefore encourage establishment of a pilot program to resolve issues regarding effective C&D debris sorting.

To the extent any C&D waste is ultimately allowed to qualify as an eligible biomass fuel, it must be accompanied not only by strict sorting requirements but also by stringent air emissions standards that require use of best achievable emissions limits – including 99.9% removal of heavy metals, as well as constant emissions monitoring.

In addition, with respect to biomass fuels in general, we support the comments made by our colleagues from the Union of Concerned Scientists at the Division's public hearing on June 28, 2006 regarding the need to ensure that Eligible Biomass Fuels are harvested in a sustainable manner in order to ensure that the statutory "low emissions" mandate is met for carbon dioxide.

Eligibility Criteria for "Retrofitted" Biomass Facilities:

We are concerned that proposed revisions to the regulations regarding "Eligibility Criteria for Vintage Waivers" potentially could open the door to full RPS eligibility for older facilities, in violation of the Massachusetts RPS statute and inconsistent with the Division's thoughtful determinations reflected in the October 27, 2005 Policy Statement on the RPS Eligibility of Retooled Biomass Plants. Section 14.05(2), as revised, would provide that "All or a portion of the electrical energy output of a . . . Retrofitted Biomass Generation Unit . . . may qualify as New Renewable Generation," so long as other basic eligibility criteria are met. No definition of "Retrofitted Biomass Generation Unit" is supplied. As we argued in connection with the Division's July 1, 2005 Notice of Intent (NOI) Regarding Some Proposed Revisions of the Regulations Pertaining to the Definition of "Low-Emission, Advanced Biomass Power Conversion Technologies," retrofitting is not sufficient to meet the statute's requirement that only *new* generating sources can qualify for eligibility for all of their power output. The Division accordingly should either delete this reference to "Retrofitted Biomass Generation Unit[s]" or include a definition that is consistent with the statute.

Air Emission Limits:

Biomass facilities of course are expected to generate *some* air emissions, but they must meet the statutory "low emissions" requirement. *See* M.G.L. c. 25A §11F ("[A] renewable energy generating source is one which generates electricity using . . . (viii) *low-emission*, advanced

biomass power conversion technologies. . .")(Emphasis added). Accordingly, the Division should adopt the lowest feasible air emissions limits for biomass facilities that seek RPS eligibility. In this context, technical feasibility as well as economic viability should be taken into account.

As to the newly proposed guidelines, we believe the proposed limits for NOx and particulate matter (PM) alone are insufficient to ensure that the statute's "low emissions" mandate is met. We do not understand why the more comprehensive proposed limits from the 2005 Biomass NOI have been set aside here (i.e., limits for SO2, ammonia, VOC, toxics, heavy metals, etc.). This is especially problematic if C&D debris should be considered as an eligible biomass fuel.

We are also concerned about the prospective relegation of emissions control limits for pollutants other than NOx and PM to each facility's respective state air permitting agency, as suggested in the Draft Biomass/RPS Guideline. We believe such a system would render it impossible to equitably make RPS eligibility determinations for biomass facilities throughout the region. Further, we do not see how such a system of relegating emission limits to various state permitting agencies throughout the region could possibly ensure that all eligible facilities would meet the statute's "low emissions" mandate. Other state air permitting agencies can only be presumed to regulate basic compliance with the federal Clean Air Act. The RPS statute requires more than that, and demands that the Division establish "low emissions" criteria. At minimum, the Division should rely on the most recent biomass facility BACT determination by Massachusetts DEP for a Massachusetts facility, and apply those standards to all out-of-state facilities that seek MA RPS eligibility.

In addition, we fail to understand why the currently proposed NOx emission limits are weaker than any of the proposed limits suggested in the Division's 2005 Biomass NOI, including the "permitted emissions limits" as well as "achievable emissions limits." We do not believe the newly proposed weaker NOx limits are adequate.

In addition, emission limits should be set for generators other than just solid fueled boilers. Limits must be set for all fuels and power systems.

Advanced Power Conversion Technology:

With respect to the proposed RPS regulatory revisions and guidelines as they pertain to net heat rate and acceptable power conversion technologies, the provisions must adhere to the statutory mandate of "advanced power conversion technology." The proposal to remove the categorical exclusion of stoker combustion technology is inconsistent with the RPS statute's requirement for "advanced power conversion" technologies. We have not seen any evidence that this old power conversion technology has advanced to significantly improve efficiency (and reduce emissions) such that it ought to qualify.

In addition, the proposed net heat rate "targets" should be clarified. Unless they are set as minimum thresholds, these net heat rate standards cannot ensure that the "advanced power

conversion technology" requirement is met – and they remain inferior to regulations that specifically identify eligible power conversion technologies.

Miscellaneous Additional Considerations:

Predictability and stability are critically important for fostering investment in new renewable energy generation. Any changes to the RPS regulations should be geared toward fostering such predictability. While we appreciate the Division's efforts to clarify the biomass facility eligibility criteria and move away from case-by-case determinations without objective criteria, we are concerned that the newly proposed revisions to the RPS regulations go beyond clarification and would fundamentally alter some of the rules in ways that we believe are inconsistent with the RPS statute.

Thank you for the opportunity to provide these initial comments. We look forward to providing greater detail later in our final comments.

Sincerely,

Susan M. Reid

Susan M. Reid, Esq.
Staff Attorney